

The Honorable Judge Richard A. Jones

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE**

WASHINGTON STATE LONG-TERM CARE
OMBUDSMAN, LOUISE RYAN, et al.,

Plaintiffs,

v.

SUSAN N. DREYFUS, in her official capacity
as Secretary of the Washington State
Department of Social and Health Services, et al.,

Defendant.

NO. CV9-908RAJ

**ORDER OF FINAL
APPROVAL OF THE
CLASS SETTLEMENT
AGREEMENT AND
DISMISSAL WITH
PREJUDICE**

This matter comes before the Court pursuant to the Court's Order issued August 11, 2010 (Dkt. #200), setting the final fairness hearing for approval of the parties' class settlement agreement and dismissal of this matter with prejudice on September 16, 2010, after notice of the class settlement agreement and hearing date was sent to all class members.

I. FINDINGS OF FACT

1. The Court has reviewed the class settlement agreement (Dkt. #199, Exhibit 2), executed by the representative plaintiffs and defendant.

2. The parties' representations in the class settlement agreement demonstrate that the Department of Social and Health Services has worked to comply with the Court's previous injunction order dated September 4, 2009, to reinstate adult day health services for class members who are willing and able to participate in the adult day health program, that

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1 representative plaintiffs have monitored such reinstatement, and that any individual plaintiffs
 2 who have not been returned to adult day health services or alternative community based
 3 Medicaid skilled services will have that opportunity as a result of this settlement.

4 3. The terms of the class settlement agreement require the Department of Social
 5 and Health Services to provide proper pre-termination notice and administrative hearing
 6 rights before any future termination or reduction of adult day health services to class
 7 members and other ADH recipients.

8 4. The parties' representations in the class settlement agreement demonstrate that
 9 the Legislature has reinstated funding for the adult day health Medicaid program at a
 10 consistent level, the Department of Social and Health Services is pursuing amendments to its
 11 State Medicaid Plan to provide adult day health services at a consistent level in the future,
 12 and there is no plan to terminate or reduce the program.

13 5. The class settlement agreement (Dkt. #199, Exhibit 2) and class notices (Dkt.
 14 #199, Exhibits 3-4), were previously approved by the Court (Dkt. #200) and required all
 15 class members to receive notices, translated by the Department as necessary, describing each
 16 class member's right to receive reimbursement for out-of-pocket expenses for adult day
 17 health services and/or transportation during the Department's suspension of adult day health
 18 services beginning on July 1, 2009, notice of the class settlement and date for final approval
 19 and dismissal of the lawsuit, and notice of the right to request an administrative hearing for
 20 any class member claiming that his or her adult day health services should presently be
 21 reinstated at the same level he or she received on June 30, 2009.

22 II. CONCLUSIONS OF LAW

23 1. The class settlement agreement includes the requirement for the Department of
 24 Social and Health Service to provide notice and administrative hearing rights in advance of
 25 any future termination or reduction of adult day health services for class members and other
 26 ADH recipients, as required by the Due Process Clause of the Fourteenth Amendment to the

1 United States Constitution and federal Medicaid regulations, 42 C.F.R. §§ 431.230 (2009),
 2 435.930(b) (2009).

3 2. The class settlement agreement provides for payment by defendant of
 4 reasonable attorney fees, costs and statutory interest to plaintiffs as prevailing parties under
 5 their procedural due process claim and as authorized by 42 U.S.C. § 1988.

6 3. The class settlement agreement provides for adequate notice to class members
 7 of their right to obtain reimbursement for any out-of-pocket payment for adult day health
 8 services or transportation during the period such services were terminated by the Department
 9 of Social and Health Services in 2009, for the right to contest the current level of
 10 participation in adult day health services by all class members, followed by a hearing in the
 11 case of disputes, and for notice of the class settlement agreement and date of final fairness
 12 hearing. It also makes clear that class members' potential damages claims from the
 13 termination of adult day health services from July to September, 2009, are not waived by this
 14 settlement agreement.

15 4. The Court therefore concludes that consistent with Fed. R. Civ. P. 23(e), the
 16 class settlement agreement is fair, reasonable and adequate, and a final order of approval
 17 should be entered and this matter dismissed with prejudice.

18 **IT IS ORDERED AS FOLLOWS:**

19 A. The class settlement agreement executed by the representative plaintiffs and
 20 defendant is approved;

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1 B. This matter is dismissed with prejudice, with costs and fees to be paid
2 consistent with the terms of the parties' class settlement agreement.

3 IT IS SO ORDERED.

4 Dated this 16th day of September, 2010.

5 
6 The Honorable Richard A. Jones
7 United States District Judge

8 Presented by:
9

10 ROBERT M. MCKENNA
11 Attorney General

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